

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

CARSON ALBERTONI HOTEL COMPANY,
INCORPORATED d/b/a HAMPTON INN

Employer

and

Case 21-RC-21203

CHAUFFEURS, SALES DRIVERS AND HELPERS
UNION, LOCAL 572, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing in this matter was held before a hearing officer of the National Labor Relations Board.¹ Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, the undersigned makes the following findings and conclusions.²

I. Issues

The sole issue raised in this matter is whether the petitioned-for unit is an appropriate unit under Section 9(b) of the Act. More specifically, the question is whether or not the front desk

¹ The Petitioner and the Employer filed timely briefs. The submissions of both parties were duly considered. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

² The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purpose of the Act to assert jurisdiction. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and seeks to represent certain employees of the Employer. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and 2(6) and (7) of the Act.

clerks share a sufficient community of interest with the Employer's other petitioned-for employees, to be included in the unit

II. Conclusion

Based on the record, and the post-hearing briefs filed by the Employer and the Petitioner, I find that the front desk clerks do not share a sufficient community of interest with the Employer's other petitioned-for employees, and I shall exclude them from the appropriate unit under Section 9(b) of the Act.

III. Facts

A. Background and the Employer's Operations

There is no prior collective-bargaining history between the Employer and the Petitioner. Additionally the Petitioner does not have any pending petitions in other Regional Offices involving other facilities owned or operated by the Employer.

The Employer operates a 136-room hotel located in Carson, California. The Employer employs about 28 employees, including the front desk clerks. The hotel is run by Co-General Managers Marianne Li ("M. Li") and Henry Li ("H. Li").

The Employer has a program called "H Honor" which is essentially a "VIP" program for returning guests. As part of this program, guests are provided with special food and beverage items and also offered additional special services, such as turning on the air conditioner and the radio before the guests enter their rooms. The Employer also has a policy of guaranteeing clean and friendly service. If guests are not fully satisfied with their stay at the hotel, they are entitled to a 100% refund. The Employer provides guests with a hot breakfast buffet every morning from 5:00 a.m. to 10:00 a.m. The hotel provides parking, has a pool and exercise room for guests, as well as an area with vending machines.

The front desk area of the hotel, where guests check in and out, is located on the first floor. The breakfast buffet area, where guests have breakfast in the mornings, is located directly across from the front desk area. Also on the first floor is the laundry facility, where the hotel linens, towels, and other items are laundered and stored for use. Next to the laundry facility is an employee break room where employees can eat and take their breaks. There are lockers in the break room for employees' use. There are public restrooms adjacent to the break room and another restroom located in the office behind the front desk. The employee time clock, where all employees clock in and out, is also located behind the front desk.

B. Employees' Primary Job Duties and Responsibilities

The housekeepers³ are responsible for assuring that the guest rooms are clean and ready for the future guests. They change the towels and linens, vacuum, clean the furniture, and clean the bathrooms. They also supply each guest room with lotions and soaps, toilet paper, and tissues, and assure that the hair dryer is working and check to see if any light bulbs in the room need replacement. If a particular guest is part of the H Honor program, then the housekeepers are also responsible for putting snacks and a water bottle in the room and also assuring that the air conditioner and radio are already turned on when the guest enters the room. Each housekeeper utilizes a cart during her shift to transport her cleaning supplies, trash, clean and dirty towels and linens as well as the toiletries and paper goods for the rooms. These carts are stored in the laundry facility. At the beginning of their shifts, housekeepers assure that their carts are full of the necessary linens, towels and other items, they then retrieve their carts from the laundry facility and then return their carts to the laundry facility at the end of the day.

³ There are about 14 housekeepers employed by the Employer.

The housekeeping supervisors⁴ are essentially responsible for keeping track of which rooms are clean and ready to be sold, which rooms are in need of maintenance or cleaning and which rooms are unavailable due to occupancy. The housekeeping supervisors work in conjunction with the front desk clerks to assure that the front desk clerks are aware of which rooms are clean and available for future guests when the prior guests check in and out. The housekeeping supervisors personally go to the rooms around the guests' checkout times to see whether or not the guests have left the room, and then together with the front desk employees, complete a form showing the daily status of the rooms in the hotel. The housekeeping supervisors also assign each housekeeper to a particular block of rooms to clean during their daily shifts. Additionally, the housekeeping supervisors are responsible for overseeing the lost and found, for putting water and snacks in the rooms occupied by H Honor guests, and for counting out the necessary number of linens and towels for the housekeepers' carts in the morning.⁵

The laundry employees and housekeeping employees report to the housekeeping supervisors. It is unclear whether the maintenance employee, house persons and breakfast hosts also report to the housekeeping supervisor. The housekeeping supervisors carry a pager so that they can be contacted by the front desk for status updates on the guest rooms.

The house persons⁶ are responsible for cleaning the common areas of the hotel. These employees assure that the lobby, office, parking lot, exercise room, pool area, and vending machine area are clean. They also vacuum the hallways in the hotel and empty the trash

⁴ M. Li testified that there are two housekeeping supervisors employed by the Employer, stating that one of these individuals works full-time while the other works part-time. The cumulative testimony of the witnesses however only references one housekeeping supervisor, Maria Ramirez. The parties stipulated to the inclusion of housekeeping supervisors in the unit.

⁵ The record states that it is the housekeeping supervisor that assures that each housekeeper has the appropriate number of towels and linens for the rooms they are assigned to clean. Both the housekeepers themselves and the housekeeping supervisors place the linens and towels in the housekeepers' carts.

⁶ There are currently two house persons employed by the Employer.

containers off of the housekeepers' carts. The maintenance employee⁷ is responsible for maintaining and repairing equipment, appliances, furniture and other items in the guest rooms and throughout the hotel. The maintenance employee carries a pager so that he can be contacted and informed of maintenance-related matters.

The breakfast hosts⁸ are responsible for cooking and preparing the breakfast foods and setting up the breakfast buffet. They are also responsible for preparing the beverages for the guests, including making coffee. The breakfast hosts attend to and greet the guests during the breakfast buffet hours and also prepare "to go" breakfast bags for guests to take with them when they leave the hotel. Once the breakfast buffet period has ended, the breakfast hosts break down the buffet and clean up the breakfast area. The Employer requires that at least one of the breakfast hosts speak English so as to be able to communicate with the hotel's guests. The laundry person⁹ is responsible for collecting the dirty linens and towels from the housekeepers' carts or from the guest rooms. The laundry person then launders the soiled items and folds and prepares them for later use.

Front desk clerks¹⁰ are responsible for customer service. They check guests in and out of the hotel, answer the phone, take reservations, take payments from the guests, process credit cards, handle guest complaints, help guests locate luggage carts, provide directions for guests, and keep the front desk clean. The front desk clerks also provide guests with additional toiletry items as needed, maintain coffee and fruit in the lobby for daily guest use, and prepare bags of toiletries for the housekeepers to distribute in the guests' rooms.

Additionally the night desk clerk is responsible for preparing a series of reports, showing the daily operations at the hotel, that need to be sent to the Employer's Headquarters on a daily

⁷ The record reflects that there is only one maintenance employee employed at the hotel.

⁸ There are currently two breakfast hosts employed at the hotel.

⁹ There is currently one laundry person employed at the hotel.

¹⁰ There are currently six front desk clerks employed at the hotel.

basis. Other reports are also completed for the hotel's own internal use. These reports are completed on the computer and show, among other things, how many guests are in the hotel, how many are checking out the following day, how many guests have been given refunds, any credit card payments that have been declined, cash payments received, credit card payments received, and how many bills have been settled.¹¹ General Manager M. Li often works at the front desk along with the other front desk employees.

C. Wages and Benefits¹²

All employees are paid on an hourly basis. General Manager M. Li testified that employees' pay is set depending on the employees' individual skills and abilities. She also testified that up until the last 3 years, employees were given annual wage increases of 25 cents per year. These raises have not been granted for the last 3 years. On average, the front desk clerks earn more than the other classifications of employees. The Employer entered a wage schedule into the record showing employees' wage rates from 2006 through 2010. The wage schedule shows the following hourly wages: front desk clerks currently earn between \$9.00 and \$11.00; housekeeping and house persons currently earn between \$8.00 and \$8.50; breakfast hosts currently earn either \$8.00 or \$8.75; laundry employees currently earn either \$8.25 or \$8.75; the

¹¹ Night front desk clerk Ping Lin Hsu testified that these reports are based off of information already entered into the computer system and that he need only print them out and review the reports for discrepancies, and correct any discrepancies before forwarding them to headquarters. Hsu testified that the internal reports require that he do some calculations to determine the correct monetary amounts. On cross-examination, Hsu testified that the reports could take him as long as 4 to 6 hours to complete but on redirect he testified that the reports can be completed quickly, within 20-30 minutes, if he is not interrupted by guests or other urgent work responsibilities.

¹² There was some unsubstantiated testimony on the record proffered by the Petitioner to show that the front desk clerks are extended certain "perks" not offered to other employees, such as open access to the breakfast buffet in the morning and offers to stay overnight for free in the hotel. However the evidence provided in this regard was contradictory and failed to establish such policies. Accordingly these alleged benefits will not be considered in this decision.

maintenance employee currently earns \$11.00; and the housekeeping supervisor earns \$9.25.¹³

Housekeeping employees also earn tips.

General Manager M. Li testified that front desk clerks start at a lower rate of pay during their training period but once management is satisfied that the front desk clerks are fully trained on the computer, their rate of pay is increased. The wage schedule shows that in 2009 and 2010, two front desk clerks received a pay increase of between 75 cents to \$1.00 per hour within the same year they were hired. The wage schedule and other testimonial evidence show that the other employees at the hotel do not receive raises as quickly as the front desk clerks. For instance, the other employees, if they receive a wage increase at all, appear to receive raises of only 25 to 50 cents per hour, on an annual basis. Additionally, relatively newer front desk clerks, who have worked for the Employer for 3 years or less, earn more on average than other employees who have worked for the Employer for as many as 18 years. No employees at the hotel are provided with health insurance or any other formal benefits.

D. Training and Qualification¹⁴

Front desk clerks are required to speak English. Aside from the Employer's requirement that at least one breakfast host speak English, no other employees are required to speak English. Front desk clerks have to know how to operate the following equipment: computer, fax machine, telephone, switch board, credit card machine, coffee machine, and a cable TV machine for guests' in-room movies. Front desk clerks utilize the computer on a regular basis to check guests in and out, take reservations, search for Internet maps for guests, and to prepare the

¹³ The wage schedule shows classifications of employees and the number of employees within each classification that differ from the testimony provided at the hearing. These discrepancies were not explained in the record.

¹⁴ The Employer provided copies of job lists which show a daily checklist of the responsibilities of employees in the given classification, similar to the responsibilities described above. On the reverse side of this form is an evaluation form that is used to evaluate an employee's progress. The Employer provided these forms for only the following classifications of employees: PBX Operator; Reservationist; Front Desk Clerk; and Room Attendant. M. Li testified that these forms are not generally used by the Hotel because the employees already know their job responsibilities. M. Li also explained that these job lists and job classifications have changed over time and may not be current. The Employer does, however, use these forms when it evaluates employees' work performance.

reports described above. Front desk clerks watch a video program online¹⁵ to prepare them for their job responsibilities. They are trained on the job.

Breakfast hosts use an oven and a waffle maker to prepare the breakfast foods. They are not required to hold any food-handler certificate. House persons utilize brooms, mops, trash bags, rags, and cleaning chemicals in their daily duties. They are required to sign off on a certification that they have been trained to use cleaning chemicals. The maintenance employee utilizes the tools in his toolbox, a ladder, paint, paint brushes, and paint thinner in his routine duties. The laundry person operates the washer and dryer and is not required to have any special certification to operate this equipment. The housekeepers use various cleaning solutions, brooms, mops, sponges, rags, and trash bags to clean the guest rooms. There was not much testimony proffered regarding the training provided to employees in classifications other than the front desk clerks. According to M. Li, these other employees also receive on-the-job training.

M. Li testified that there is currently one housekeeping employee who is interested in transferring to a front desk position. M. Li testified that she wants to evaluate how well this individual communicates with the public. If she determines that the individual communicates well with the public, she will transfer her to a front desk position once one becomes available. Additionally, front desk clerk/ breakfast host Eva Angelina Solis (“Solis”) divides her time as both a breakfast hostess and a front desk clerk. Aside from the two examples above, the record was devoid of evidence of employees in the petitioned-for unit transferring to a front desk clerk position or of front desk clerks simultaneously holding a job classification in the petitioned-for unit.

¹⁵ Solis testified that it took her one month, off and on, to complete the on-line training and that it took her approximately 2-3 months to be fully trained to perform the front desk responsibilities.

E. Uniforms

The employees all wear long khaki pants and an Employer issued T-shirt, polo T-shirt, long-sleeved shirt, or blouse. These shirts vary in color and pattern. Some have stripes or some other pattern and are colored either light blue, sea blue, or green. An optional part of the uniform is also a striped cotton jacket or a sweater. M. Li testified that employees all wear the same uniform and are given the option to mix and match the clothing described above. She also stated that all employees are required to wear their issued T-shirt.¹⁶ She testified that the maintenance employee's uniform is different than that of the other employees. He wears a blue polo shirt with his khaki pants.

Employee Solis testified that she chooses from a blouse, a T-shirt, and a sweater when she works at the front desk. Laundry person Alma Enriquez ("Enriquez") testified that when she was given her uniform by the Employer she was issued three T-shirts, one shirt, and one pair of pants. She then requested one of the longer button-down, cotton-blend shirts that had been given to the front desk clerks, because she felt that the longer shirt would be more comfortable. Management provided one of these longer shirts to her at her request. Enriquez testified that only the front desk clerks wear this longer button-down shirt. It is not stated on the record whether other employees were provided this longer shirt or whether any of the other employees ever requested to have one of the longer shirts, as Enriquez did.

F. Work Schedules

Housekeepers typically work from 9:00 or 10:00 a.m. to approximately 5:00 p.m. One of the housekeepers works from 7:45 or 8:30 a.m. to about 2:45 p.m. The housekeeping supervisor works from 8:30 a.m. to about 5:30 p.m. The breakfast hosts work from 4:00 or 5:00 a.m. to approximately 11:30 a.m. The house person works from 8:00 or 9:00 a.m. to 4:00 or 5:00 p.m.

¹⁶ M. Li initially testified that front desk clerks are required to wear the jacket over their T-shirt. After further questioning she testified that the front desk clerks could wear the T-shirt with the jacket or just the T-shirt alone.

The maintenance person works from about 10:00 a.m. to 6:00 p.m. The laundry person works from 9:00 a.m. to 5:00 p.m. There is one employee who performs breakfast host and house person responsibilities, and does not work the typical daytime schedule; instead she works from 11:00 p.m. to 7:00 a.m.

The front desk clerks alternate between three 8-hour shifts within a 24-hour time period. The front desk clerks work either from 7:00 a.m. to 3:00 p.m., 3:00 p.m. to 11:00 p.m., or 11:00 p.m. to 7:00 a.m. There are periods of time when the front desk clerks' schedules overlap and sometimes there will be more than one front desk clerk at the front desk at a time. All of the above-described employees' hours tend to vary depending on how busy the hotel is.

G. Contact among Employees, Functional Integration, and Interchangeability

Nighttime front desk clerk Ping Lin Hsu ("Hsu") testified that in the mornings he prepares a room status report to show which rooms are occupied that day, which guests are checking out that day, and which rooms need to be cleaned and prepared for new guests. Hsu then reviews the housekeeper schedule to see which maids will be working that particular day and evenly distributes the blocks of rooms that need to be cleaned, based on the number of housekeepers working that particular day.

When the housekeeper supervisor arrives in the morning she assigns a particular housekeeper to each block of rooms. She writes this information down on the report and then brings the room-status report along with her throughout the day so she can keep track of which housekeeper was assigned to each block of rooms, and what time she checked the rooms to determine if they were ready for new guests. Once the housekeeping supervisor has completed her shift for the day she returns the completed room-status report to the front desk and the front desk clerks then use that form to create the daily status report for the following day. The front

desk relies on this completed form to ensure that the rooms provided for future guests are clean and ready for use.

The maid-assignment sheet is completed by the individual housekeepers. The front desk clerk lists on this form the room numbers assigned to the particular housekeeper and whether or not the guests in those rooms are due to check out or will be staying for another night. The housekeeper then writes down the time that she completes the cleaning of the rooms, writes any special notations about the rooms she cleaned, and returns this sheet along with her master room key to the front desk at the end of her shift. The front desk clerks then use this sheet to determine which rooms are clean and ready for new guests to check in.

The front desk clerks are in contact with the housekeeping supervisor throughout the day in order to learn which rooms have been cleaned and are ready to sell. Additionally the housekeeping supervisor will inform the front desk if there is a room with a maintenance issue so that the front desk knows not to sell that room until the maintenance employee has attended to any maintenance issues. If a guest decides to stay in the hotel room for another night, the front desk will also notify the housekeeping supervisor so that she can inform the housekeeper responsible for cleaning that room. Also, if the front desk clerks are unsure if a guest has left a room, they will first call the room to see if the guests are there. If they get no answer, they will contact the housekeeping supervisor and ask her to go up to the room and knock on the door to determine whether or not the guests have left.

The front desk clerks also inform the housekeeping supervisor which guests are part of the H Honor program so that the housekeepers know to provide the special beverages, snacks, and services in those rooms. If a guest reports to the front desk that he left an item behind in the guest room, the front desk clerk will speak to the housekeeping supervisor so that she can ask the housekeeper assigned to that room if she has found the lost item. The housekeeping supervisor

carries a pager so that she can be reached by the front desk clerks and other employees throughout the day.

Front desk clerk Solis, who is a fluent Spanish speaker, testified that she has frequent contact with the housekeeping staff throughout the day. She speaks with them in the mornings when she gives them their master key to the rooms, and the bags of toiletries for their carts. She also occasionally gives the housekeepers the list showing their room assignments, if the housekeeping supervisor is unavailable. Solis also testified that housekeepers will call her from the rooms they are cleaning to inform her that certain things in the room are in need of repair. Solis then makes a note of these items to pass on to the maintenance employee. Front desk clerk Hsu testified that he does not regularly communicate with the housekeepers because he is unable to speak Spanish.

Solis also testified that she is in contact with the maintenance employee and laundry person during her daily duties. In the morning Solis gives the maintenance employee the list of things needed to be repaired and then contacts him throughout the day when other issues arise.

The front desk clerks also have some daily contact and interaction with the laundry person, breakfast hosts, and maintenance employee. In the mornings, the front desk clerks provide the laundry person with a list of the rooms that have checked out that day so that she can go up those rooms and retrieve the dirty towels and sheets to be laundered. The laundry person also provides the front desk clerks with a stack of towels that the front desk then distributes to guests that are going out to the hotel pool. The front desk will call the laundry person to bring more pool towels if they run out.

The front desk communicates the number of rooms sold and the number of guests in the hotel to the breakfast hosts so that they have an idea of how much food they need to prepare. The front desk also prepares the breakfast to-go bags in the mornings for the guests. Those to-go

bags are left at the front desk for guests to pick up. The front desk also assures that the coffee and fruit basket in the breakfast area are full throughout the day. The maintenance employee carries a pager so that he can be contacted by the front desk when a maintenance problem arises.

General Manager M. Li and front desk clerks Solis and Hsu testified that the front desk clerks do on occasion need to perform tasks of the housekeeping staff or maintenance employees when those individuals have left for the day or are otherwise unavailable. M. Li testified generally that front desk clerks sometimes have to clean the rooms, vacuum, change sheets, make beds, deliver toiletries or towels to the rooms, check the rooms to see if the guests have left,¹⁷ unclog toilets, change light bulbs, or change remote control batteries.¹⁸ M. Li, however, did not provide specific examples of times when front desk clerks have had to assume the above-described duties. Li testified that because of the 100% guarantee policy at the hotel, the front desk clerks have to do all that they can to keep the guests satisfied, so if there is a problem and the employees normally responsible for addressing those problems are not available, the front desk has to step in and assure the problem is addressed as soon as possible.¹⁹ Solis further testified that she has assisted the laundry person on occasion when that person gets behind.²⁰ She also testified that, when the maintenance employee was unavailable, she has checked guests' television sets and remote controls when they are not working, but that "checking the television set" involved checking to see whether or not the television was plugged in, and that she has only had to do this on one or two occasions.

Hsu testified that because he works the night shift, when practically all other employees are no longer on duty, he ends up personally handling a lot of customer complaints that involve

¹⁷ Solis testified that she has only had to do this on one occasion.

¹⁸ Solis testified that she has never cleaned or unclogged toilets, vacuumed guest rooms, made a bed, or otherwise cleaned inside a guestroom.

¹⁹ M. Li testified that the Hotel issues refunds as often as one time per day or one time per month. Hsu testified that in the first 8 days of June 2010 the hotel had issued four refunds.

²⁰ Laundry person Enriquez testified that Solis has never assisted her in performing her duties during her shift.

maintenance and housekeeping matters. For instance, Hsu testified that he has had to retrieve sheets from the laundry facility and change the sheets on a guest's bed, change light bulbs, plug in television sets, change out phone lines or switch phones when the phones in the rooms are not working, clean and unclog toilets, check on air conditioning units and try to fix the settings to get them working properly, and change batteries in a remote control. He testified that he has never had to clean an entire guest room. Hsu testified that he has had to perform these tasks, sometimes as often as six to seven times per night. Hsu also turns on the oven in the breakfast area in the early morning and puts some of the breakfast food in the oven, and cleans and mops the front area of the hotel, using the same cleaning sprays and other tools used by the housekeeping and house person staff.

Aside from the examples discussed above, there is some additional interchange between the petitioned-for job classifications. For example, it is the maintenance employee who regularly loads the washing machines with detergent in the laundry facility. Moreover the housekeeping supervisor assists the laundry person when she gets behind. Employee Maria Flores interchangeably assists with breakfast host, laundry, and house person duties, and employee Solis works as both a breakfast host and a front desk clerk. There was, however, no evidence presented showing that any of the petitioned-for job classifications ever assume the roles and duties of the front desk clerks.

All employees are permitted to take a lunch break.²¹ The break room is used primarily by the petitioned-for unit employees. Additionally the lockers located in the break room are used only by the petitioned-for employees.²² Solis testified that she does occasionally use the break

²¹ Li testified that no employees have scheduled lunch breaks but can take their breaks when the hotel is not busy. Enriquez testified that she has to take her break at 2:00 or 2:10 p.m. Solis confirmed that she can take her scheduled breaks whenever she wants.

²² There was no evidence proffered to show that only the petitioned-for employees are permitted to use the break room or the lockers in the break room or that the petitioned-for employees are required to take their breaks in the break room.

room when she doesn't take her break outside.²³ Hsu testified that he doesn't generally take breaks but he will usually eat a meal in the office behind the front desk during his shift. M. Li testified that front desk clerks typically take their breaks at the front desk. The restrooms located next to the break room are primarily used by the housekeeping staff, although no evidence was proffered showing that the housekeeping staff are not permitted to use the restroom located behind the front desk.

IV. Parties' Positions

A. Petitioner

The Petitioner argues that the interests and duties shared by the petitioned-for unit are distinct and separate and thus the inclusion of the front desk clerks in the unit is not necessary to create an appropriate unit. The Petitioner stresses that the substantial differences between the blue collar petitioned-for unit versus the white collar front desk employees. For instance, the Petitioner points out that the petitioned-for unit employees work together throughout the hotel to clean and maintain the entire hotel. The petitioned-for employees assume each other's job responsibilities when need be and complete the whole host of duties that come with the respective positions. The front desk clerks, on the other hand, spend the vast majority of their working time behind the front desk and perform tasks completed by no one but front desk clerks and management. These employees handle the discrete tasks of taking reservations, handling monetary transactions, running the switchboard, and preparing and printing various reports, among other duties. When the front desk clerks do fill in for the petitioned-for employees, they do so only on a temporary basis.

The Petitioner also points to a variety of factors in support of its position that the front desk clerks do not share a community of interest with the other employees. The Petitioner

²³ Laundry person Enriquez testified that she has never seen Solis in the break room.

asserts: the front desk clerks are more highly skilled than the petitioned-for employees; the front desk clerks are required to speak English while the other employees are not, there is little communication and interaction between petitioned-for employees and the front desk clerks;²⁴ the petitioned-for employees are all supervised by the housekeeping supervisor; while the front desk clerks are supervised by the general managers; the front desk clerks earn more money and receive fringe benefits (in the form of overnight stays and permission to eat from the breakfast buffet); the front desk clerks work a different schedule and utilize different tools and equipment than the other employees; and the front desk clerks wear different uniforms than the other employees.

Finally the Petitioner argues that wall-to-wall units are no longer presumed appropriate in the hotel/motel industry. *Omni International Hotel*, 283 NLRB 475 (1987). The Employer also cites to *Stanford Park Hotel*, 287 NLRB 1291 (1988), asserting that that case is factually analogous to the instant situation. In that case the Board stressed that the unit excluding front desk employees was not rendered inappropriate despite the fact that front desk employees were asked to fully clean guest rooms once per week, were subject to the same personnel policies, paid on an hourly basis, and received the same fringe benefits. *Id* at 1291-92. The Petitioner concludes that the petitioned-for unit is an appropriate unit for the purposes of collective bargaining.

B. Employer

The Employer argues that there is a substantial community of interest between the front desk clerks and the petitioned-for employees due to the pervasive integration of their duties. The Employer relies on a variety of factors to show this integration between the two groups of

²⁴ The Petitioner downplays employee Solis' testimony of her frequent interactions with the petitioned-for employees as Solis is the only front desk clerk who speaks Spanish and is actually able to communicate with these other individuals.

employees. The Employer asserts that the front desk clerks do not need to have any specialized skills or training, rather they need only know how to operate standard office equipment.

Additionally the Employer stresses the significant overlap between the front desk clerk's duties and those of the rest of the employees. In this regard the Employer points out that the front desk clerk employees perform various tasks that the other employees perform, such as cleaning the common areas, assisting with laundry, taking out the trash, visiting the guest rooms to assure that the guests have checked out, changing pillow cases, unclogging toilets, and delivering supplies to guest rooms.

Moreover the Employer argues that the front desk clerks' duties are functionally integrated with those of the rest of the employees and that the two groups of employees cannot work independently of each other. For instance the front desk clerks prepare the housekeeping assignments and keep in constant contact with the housekeeping supervisor to find out which rooms are available for checkout. Additionally the front desk clerks are responsible for communicating with the housekeepers and maintenance workers to assure that rooms are kept clean and in good repair. Also the Employer notes that the record provided clear evidence of interchange among the employees from one position to another. The Employer also stresses that the front desk clerks and the petitioned-for employees have similar terms and conditions of employment in that they receive comparable hourly rates of pay, no employees receive any benefits, all employees report to the general management, and all employees wear the same uniform. In support of its position described above, the Employer cites to *Lammons Hotel Courts, Inc.*, 214 NLRB 930 (1974); and *Albanese Development Corporation*, 270 NLRB 1405 (1984), two cases where the Board found a sufficient community of interest between front desk clerks and other staff employed in the hotel/motel industry.

Finally the Employer notes that the Board gives considerable weight to the fact that an employer has a small number of employees in determining that expansion of the bargaining unit is appropriate. *Fairchild Advertising, Inc.*, 72 NLRB 1082, 1084 (1947). In closing the Employer argues that a substantial community of interest exists between the front desk clerks and the rest of the staff and that accordingly, the bargaining unit should be appropriately modified to include the front desk clerks.

V. Analysis

Section 9(a) of the Act does not require that the petitioned-for bargaining unit be the only appropriate unit. Nor does the statute require that the bargaining unit be the ultimate unit or even the most appropriate unit. *Holiday Inn City Center*, 332 NLRB 1246, 1250 (2000), citing to *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950). Instead the Act only requires that the unit sought be appropriate for the purposes of collective bargaining. *Holiday Inn City Center*, supra at 1250, citing to *National Cash Register Co.*, 166 NLRB 173 (1967). Accordingly it is well settled that there are various ways in which employees of an employer may be grouped for the purposes of collective bargaining. *Rohtstein Corp.*, 233 NLRB 545, 547 (1977). And the Board has reasonably broad discretion in determining what constitutes an appropriate bargaining unit. *Overnite Transportation Co.*, 322 NLRB 723, 724 (1996). The burden is on the party challenging the unit to show that the petitioned-for bargaining unit is inappropriate. Thus, if the unit sought by the petitioner is appropriate, the inquiry will end. *P.J. Dick Contracting, Inc.*, 290 NLRB 150, 151 (1988).

In determining the appropriate bargaining unit, the Board looks to whether the employees share a “community of interest.” *Overnite Transportation Co.*, supra at 724. In analyzing the community of interest between employees, the Board will consider the following factors: bargaining history; functional integration; employee interchange; employee skills; work

performed; common supervision; and similarity in wages, hours, benefits and other terms and conditions of employment. *J.C. Penney Co.*, 328 NLRB 766 (1999). In the hotel and motel industry the Board no longer applies the rigid rule that only an overall unit consisting of all hotel/motel employees is appropriate for the purposes of collective bargaining. Instead, the Board makes unit determinations on a case-by-case basis, using the community-of-interest test applied in other industries. *Omni International Hotel of Detroit*, 283 NLRB 473 (1987).

I find that the front desk clerks do not share a sufficient community of interest with the petitioned-for employees.²⁵ I recognize that all the hotel employees have some similar working conditions, share common supervision, and assume certain responsibilities of their co-workers when need be. I also recognize that all hotel employees need to communicate and work together to assure that guests' needs at the hotel are met, and that the hotel is functioning properly. However, I find that the front desk clerk's skills and job responsibilities are substantially different from those of the petitioned-for employees. Moreover the record fails to show sufficient interchange and integration among the two groups of employees.

In the instant case, the front desk clerks and the petitioned-for employees are commonly supervised by General Managers M. Li and H. Li. Although the housekeeping supervisor may have some supervisory authority over some or all of the petitioned-for employees, her supervisory capacity and responsibilities were not clearly elicited on the record. All employees wear similar uniforms in that they wear khaki pants and a hotel-issued shirt, although the record reflected that the front desk clerks are typically the only employees that wear the longer button-down shirt accompanied by a cotton jacket or sweater. Although all employees are paid on an hourly basis and do not receive formal benefits, the front desk clerks as a group clearly earn

²⁵ Although the Employer's supported wall-to-wall unit may also be appropriate, the Board only requires that a requested unit be an appropriate unit to proceed to an election.

more, on average, than the petitioned-for employees, including petitioned-for employees who have much more seniority than the front desk employees.

While there appear to be no policies preventing them from doing so, the record suggests that the front desk clerks do not regularly intermingle with the petitioned-for employees during break times, as the two groups generally use different restrooms and different break areas. Some of the front desk clerks' work schedules do overlap with those of the petitioned-for employees. But the front desk clerks' schedules vary from those of the petitioned-for employees, who work primarily nine-to-five daytime shifts, while the front desk clerks are scheduled to work three shifts in 8-hour increments during the course of a 24-hour day.

Moreover it is clear that the front desk is required to communicate with certain staff throughout the day to assure that rooms are prepared for new guest arrivals. For instance, the record establishes that the front desk clerks are in communication with the housekeeping supervisor throughout the day, as well as with the maintenance employee.²⁶ Additionally the record reflects that there is also some limited daily communication with the laundry person. Communication of this nature is insufficient to establish that the front desk employees share a sufficient community of interest with the petitioned-for employees. Substantial contact among employees is true of most operations in the hotel industry. But such integration of operations and employee contact are not sufficient reasons for requiring that all hotel employees be combined in a single unit. *Holiday Inn City Center*, supra at 1253.

What is more, the record lacks evidence of substantial interchange of duties among the front desk clerks and the petitioned-for employees. The record fails to show any evidence that an employee in the petitioned-for classification has ever been transferred or promoted to a front

²⁶ To the extent Solis testified that she also communicates regularly with the housekeeping staff, the record suggests that this is not the norm at the hotel, but rather Solis only communicates with these employees more often than other front desk clerks due to her Spanish-language ability. However, even if all front desk clerks regularly communicate with the housekeeping staff, Solis' testimony suggests that this communication is infrequent and short in duration.

desk clerk position. Furthermore, M. Li testified generally about the interchange of responsibilities between the front desk clerks and the petitioned-for employees, but failed to give specific and concrete examples. And when front desk employees did testify, they failed to corroborate, for the most part, her assertions. Solis testified about her performance of certain housekeeping and maintenance duties. But on cross-examination, she admitted that she had only had to engage in these duties a handful of times.

Hsu testified that he regularly has to perform various duties outside his classification, however Hsu performs these duties during the overnight shift, when the employees who would normally perform these duties, are not working. Thus despite Hsu's testimony, that he does carry out some duties outside his classification, the circumstances by which he conducts these duties are unique to him and are not duties ordinarily performed by front desk clerks as a whole. To the extent the record does reflect that the front desk clerks do perform certain duties of the petitioned-for employees, these duties proved to be discrete tasks that are limited and brief in duration (such as delivering towels or toiletries, plugging in a television set, knocking on a guest's door, replacing a remote control battery, or plunging a toilet). Finally, although the front desk clerks' work day may involve some brief interludes of work performed by petitioned-for employees, the record is devoid of evidence showing that any of the petitioned-for employees ever engage in front desk clerical work and duties.

Lastly, the record reflects that the front desk clerks' primary duties are substantially different from those of the petitioned-for employees. The front desk clerks require specialized skills including: the ability to communicate effectively with the public; English-language skills; computer skills; computational skills; sufficient literacy to be able to review and complete the various forms on a daily basis; and ability to handle money and process monetary transactions, among other duties. As testified by Solis, it took her 2 to 3 months until she was fully trained on

the front desk. As described at length above, the front desk clerks' job duties are "white collar" clerical duties, as opposed to the duties of the petitioned-for employees which are substantially physical and manual "blue collar" duties. In cases like these, the Board places significant weight on the degree of the variation of work between the petitioned for employees and the challenged employee classification. See *Dinah's Hotel Corporation*, 295 NLRB 1100, 1101 (1989); ("[A]nd most importantly, [the petitioned-for employees] perform work which greatly varies in kind from that of the other employees."); *Regency Hyatt House*, 171 NLRB 1347, 1349 (1968).

The cases relied upon by the Employer reflect substantially more interchange of duties among employees than is present in the instant case.²⁷ Here, however, the record reveals that the job duties and skill levels of the two groups of employees are significantly distinct: there is little across the board interchange of responsibilities among the two groups of employees; and the communication among employees is limited. Thus the record reflects that the front desk clerks and the petitioned-for employees lack a sufficient community of interest. Accordingly the Employer has failed to meet its burden to prove that the Petitioner's petitioned-for unit is inappropriate.

²⁷ The Employer cites to two cases, asserting that they are factually analogous to the instant case and should be relied on in deciding the appropriate unit. The Employer's cases are readily distinguishable from the facts of the instant case. In *Holiday Inn Atlanta Northwest*, 214 NLRB 930 (1974), the Board found a wall-to-wall unit, including desk clerks to be an appropriate unit. In making that decision, the Board relied on the fact that the front desk employees regularly performed porter-bellman duties, and that the porter-bellmen regularly performed front desk duties. Additionally the front desk clerks regularly spent an hour of their work day working in the hotel restaurant and also was regularly scheduled to inspect four or five hotel rooms to insure cleanliness, a job which was regularly completed by the maid-inspectress. *Id* at 930. Similarly in *Holiday Inn Alton*, 270 NLRB 1405 (1984), the Board found a sufficient community of interest between the petitioned-for housekeeping and laundry employees and the bellmen, office clerical and other employees at issue. In making this finding the Board found that the challenged employees regularly performed the same duties performed by the petitioned-for employees, including, but not limited to, cleaning and preparing hotel guestrooms. *Id* at 1406. As demonstrated above, the cases cited by the Employer reveal substantially more interchange of responsibilities than is present in the instant case and thus are factually distinguishable.

VI. Conclusion

The record supports a finding that the front desk clerks do not share a sufficient community of interest with the Employer's other petitioned for employees and that the petitioned-for unit is an appropriate unit under Section 9(b) of the Act.

I find that the following unit is the appropriate unit for the purposes of collective bargaining and will direct an election this unit:

All full-time and regular part-time housekeepers, housekeeping supervisors, breakfast hosts, house persons, maintenance employees, and laundry persons employed by the Employer at the facility located at 767 East Albertoni Street, Carson, California; excluding all other employees, front desk clerks, professional employees, guards, managers and supervisors as defined in the Act.

There are approximately 23 employees in the appropriate unit.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented by the **Chauffeurs, Sales Drivers and Helpers Union, Local 572, International Brotherhood of Teamsters** for purposes of collective bargaining. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who

have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **July 2, 2010**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to

comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, www.nlr.gov,²⁸ by mail, or by facsimile transmission at (213) 894-2778. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copy need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

²⁸ To file the eligibility list electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **July 9, 2010**. The request may be filed electronically through E-Gov on the Agency's website, www.nlr.gov,²⁹ but may not be filed by facsimile.

DATED at Los Angeles, California, this 25th day of June, 2010.

/s/ James F. Small
James F. Small
Regional Director, Region 21
National Labor Relations Board

²⁹ To file the request for review electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu and follow the detailed instructions. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Agency's website, www.nlr.gov.